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IN THE

Supreme Court of the United States.

October Term, 1957.

No. 34.

WILLIAM J. KERNAN, ADMINISTRATOR OF THE ESTATE OF ARTHUR E. MILAN, DECEASED, AND JOHN J. MEEHAN, ADMINISTRATOR OF THE ESTATE OF DONALD H. WORRELL, DECEASED,

Petitioners,

v.

AMERICAN DREDGING COMPANY, AS OWNER OF THE TUG "ARTHUR N. HERRON," IN THE MATTER OF THE PETITION FOR EXONERATION FROM OR LIMITATION OF LIABILITY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT.

COUNTER-STATEMENT OF THE CASE.

Shortly after 10:00 P. M. on the evening of November 18, 1952 the respondent's tugboat ARTHUR N. HERRON was proceeding down the Schuylkill River within the City of Philadelphia. Being towed alongside the tug was a loaded mud scow. As the tug was passing the refinery of the Gulf Oil Corporation, which was situated upon what we will refer

to as the left bank of the river, the surface of the river suddenly burst into flames. The tug and barge were enveloped in a sea of fire. The tug was badly damaged. Some of the crew escaped, but two members of the crew lost their lives.

The first litigation commenced as the result of the disaster was the institution of a suit on October 12, 1953 by William J. Kernan, etc., against Gulf Oil Corporation. That action was docketed in the United States District Court for the Eastern District of Pennsylvania as Civil Action 15908. The complaint in that case was printed as part of an appendix to the respondent's brief in opposition in the present case.

Thereafter on November 2, 1953 the two administrators filed civil actions in the same court against American Dredging Company, the respondent herein. On May 11, 1953 the respondent filed its petition under 46 U. S. C. A. 181, et seq., in which it prayed for exoneration from or limitation of liability.

The District Court found that the cause of the fire was the ignition of vapor lying above an extensive accumulation of some highly volatile petroleum product spread over the surface of the river (D. C. Opinion, R. 416).

The refinery was on the river's left bank. The tug was proceeding down the opposite side of the river on its own right of the center line. The river at this point is approximately 1,000 feet wide and the evidence showed that the area of flames seemed to be confined to approximately the right-hand half of the river.

Based upon the facts found by the District Court there was not "the slightest reason to anticipate any danger" from the fact that ocean-going tankers were loading and unloading at the refinery about 3,500 feet away from the tug (R. 420).

The fact that the flames completely enveloped the tug and the barge and rose far above the deck of the tug,

completely shut off the captain's view in every direction (R. 415) and made it impossible for him to know the extent of the fire. The captain of the tug was found to be as competent as the ordinary man in his calling (R. 424) and the court refused to find any negligence on the part of the captain of the tug or any of the members of the crew when confronted with the most extraordinary situation which they faced that night.

The court found that there had been a violation of the rules to prevent collisions of vessels, Section 80.16(h) of the Coast Guard Regulations,[1] which provided that scows shall carry a white light and that "the white light shall be carried not less than eight feet above the surface of the water, and shall be so placed as to show an unbroken light all around the horizon. . . ."

The lantern carried by the barge was the customary and well-recognized type used upon scows, barges and other small craft. 33 U. S. C. A. 176 contemplates and specifically refers to the use of lanterns upon small craft. The court found that the respondent here had failed to carry the burden of proving that the lantern was not the source of ignition[2] but that the fact that the lantern was three feet rather than eight feet above the surface of the water was not negligence and did not render the flotilla unseaworthy.

The District Court accordingly granted the prayer of the petition and exonerated this respondent. The Court of Appeals affirmed, one judge dissenting, and a petition for rehearing was denied.

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1. Pertinent sections are printed as an appendix to this brief.

2. The holding as to burden of proof is not conceded to be correct and will be contested should it ever become material.

SUMMARY OF ARGUMENT.

The Limitation of Liability Act should be construed so as to effectuate its purpose. The lower courts found that while there had been a violation of a regulation governing the height of lights on a scow at night, the purpose of the statute was to prevent collision, not to prevent the ignition of volatile substances floating upon navigable waters. It therefore held that since the breach did not lead to the harm which the statute had been intended to remedy, the breach was neither negligence nor evidence of negligence. That holding was in accordance with well-established principles and was clearly right.

There was no unseaworthiness and no breach of the warranty of seaworthiness. In using the term "warranty of seaworthiness" the courts have meant only that the ship shall be *reasonably fit* for the intended voyage. There is no requirement that she must be seaworthy in the sense that no harm will result under any circumstances. A condition which requires an act of gross negligence on the part of some third party to bring about harm does not render a ship unseaworthy. Since these definitions of seaworthiness and the rules flowing therefrom were well recognized when Congress re-examined the whole question of limitation of liability and amended the statute, the fact that Congress did not change the law so as to provide that any violation of any statute would make for unseaworthiness is clear evidence that Congress did not intend any such result.

The petitioners are really asking that this Court enunciate a new doctrine that if harm results or injury occurs, there is unseaworthiness. They seek to justify the result which they ask this Court to reach under the guise of invoking the *Safety Appliance Act*, 50 U. S. C. A. 1, et seq.

The cases cited and relied upon by the petitioner which construe the Federal Employers' Liability Act and the Safety Appliance Act are not in point. A close analysis will show that they do not stand for the proposition which the petitioners advance.

ARGUMENT.

The Finding Below That the Violation of the Regulation Intended to Prevent Collision Was Not Evidence of Negligence Under the Facts Here Is Clearly Right.

We first direct ourselves to the question of whether the violation of the regulation which had to do with the lighting of scows and other vessels for the purpose of preventing collision at night was negligence or evidence of negligence. Before doing so we point out certain basic considerations.

It is worthwhile to remember that the statute known as the Limitation of Liability Act was passed March 3, 1851 to bring the law of the United States into conformity with that of England specifically and other maritime nations in general. It was patterned upon the English Act[3] and the revised statutes of Maine. The Maine Act had substantially adopted the provisions of an earlier Massachusetts Act. The passage of the initial statute in 1851 followed this Court's refusal to accept limitation of liability as a part of the General Maritime Law, *The Lexington*, 47 U. S. 344 (1848). The purpose of the legislation was to encourage American shipbuilding and the employment of American ships in commerce, *Butler v. Boston & S. S. S. Co.*, 130 U. S. 527. This Court has said that the statute must be liberally construed in favor of shipowners; *Providence & N. Y. S. S. Co. v. Hill Mfg. Co.*, 109 U. S. 578. The statute should be construed to effectuate the Congressional purpose. *Phillips v. Clyde S. S. Co.*, 17 F. (2d) 250, (C. A. 4); *The 84-H*, (C. A. 2) 296 F. 427, cert. den. 264 U. S. 596. Just as judicial expansion of the Act may seem inappropriate[4] so, we suggest, is judicial limitation upon a statute which the

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3. 26 Geo. III, C. P. 86 (1786).

4. *Maryland Casualty Co. v. Cushing*, 347 U. S. 409, dissenting opinion at 437.

Congress has enacted and re-enacted for purposes which transcend the confines of any particular case.[5]

It has heretofore been generally accepted law that the violation of a statute is neither negligence nor evidence of negligence. "'. . . if none of the consequences which the statute or ordinance was intended to guard against has ensued from its violation, such violation does not amount to negligence even though some other injurious consequence has resulted. . . .'" *C. J. S. Negligence*, Section 19, Page 423. *The Restatement of Torts*, Section 286, Comment (h) teaches that where a statute is intended to give protection against a particular form of harm to a particular interest, an actor who has violated it *cannot* be liable to another unless the harm which the violation caused was that from which it was the purpose of the statute to afford protection.

This rule of general law has been followed in admiralty and maritime cases. In *The Eugene Moran*, 212 U. S. 466 this Court had before it a maritime case where one of the scows had violated the predecessor of the present regulation specifying the lights to be carried upon vessels at night. In that case two scows out of a flotilla did not carry the required lights, but only one of them was involved in collision. The lower court had held the non-colliding scow equally at fault upon the ground that it had been a party to a common fault.

In answering the questions which had been certified to in that case, this Court said that the conclusion did not follow the premise.

> "When a duty is imposed for the purpose of preventing a certain consequence, a breach of it that does

5. "As such 'legitimate' seafaring nations as the United States and Britain make operating ships under their flags well-nigh prohibitive, what with high taxes and high wages and sundry rules and regulations, more and more shipping men seek shelter under cheaper registries." Earnest O. Hauser in *The Saturday Evening Post*, September 21, 1957, Page 130.

not lead to that consequence does not make a defendant liable for the tort of a third person merely because the observance of a duty might have prevented that tort." (212 U. S. 466).

The court pointed out that this was the law of England then, and it is now, *Hartley v. Mayoh & Co.*, 1 All Eng. Rep. 375 (1954).

It is plain from a review of the authorities and decided cases that the rule for which we here contend is basic in the law of torts and has been adopted into the general body of maritime jurisprudence of the United States: *The Eugene Moran, supra; Diamond State Telephone Company v. Atlantic Refining Company*, (C. A. 3) 205 F. (2d) 402 at 410; *Lady Nelson Ltd., etc. v. Creole Petroleum Corporation, etc.*, (C. A. 2) 224 F. (2d) 591 at 594, cert. den. 350 U. S. 935.

The reason for creating liability should limit it. ". . . if the defendant's wrong is the creation of a risk, his liability should be bounded by that risk." *Seavey*, 52 Harvard Law Review, 372.

The petitioners argue for a doctrine of absolute liability as if they were asking this Court to promulgate some advance in the field of tort law. In the series of articles, *Responsibility for Tortious Acts, Its History*, (Selected Essays on the Law of Torts) Wigmore demonstrates that the primitive law made no distinction between accidental and intentional injuries. As Isaacs puts it in the same volumes (Page 236) in his articles, "*Fault and Liability*", "he [Wigmore] then overwhelms us with German, Welsh, Dutch, Italian and French authorities to prove that the 'indiscriminate liability of primitive times stands for an instinctive impulse, guided by superstition, to visit with vengeance, the visible source, whatever it be—human or animal, witting or unwitting—of the evil result.' "

"Among all primitive persons he tells us, 'the doer of a deed was responsible because he was the doer.'"[6]

From a rule that a man performed all acts at his peril, civilization through law has evolved standards of conduct. It has imposed liability where conduct has fallen below the norm and as the result thereof harm within the purview of the risk has resulted. In modern times courts and the authorities have spoken in terms of the area of risk. As Seavey puts it[7] ". . . if we find that the defendant created only specific risks to a plaintiff, again he is not responsible for harm not within them. . . . we ask not really was the defendant negligent, but negligent to whom, by what means, as to what kind of result; . . ."

Thus upon reason and authority the District Court was right when it held that the violation of the lighting statute which was specifically intended to reduce the risk of collision did not impose liability upon this respondent because of the ignition of inflammable products on the surface of a large navigable river. It is clear that the regulation in question was intended only to reduce the risk of collision. The title is "Rules to Prevent Collisions of Vessels." If anything further be needed, a comparison of Section 80.16 with Section 80.17 demonstrates the point. Section 80.17 governs the Hudson River and adjacent waters. It contains no requirement as to the height at which the white lights referred to in the rule shall be carried above the surface of the water. The difference is one based upon geography. The Hudson River is almost straight but the Delaware River follows a winding course. Differences in geography make for different rules. On a straight stream the height of a light makes no appreciable difference in the distance at which it would be visible. In a winding stream a light eight feet high can sometimes be

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6. *Isaacs: Selected Essays on the Law of Torts*, Page 236.

7. *Cogitations on Torts*, (1954) University of Nebraska Press. Page 32.

observed across low lying land at a bend in the river. Certainly there is as much refinery activity in the waters adjacent to the Hudson and around New New York City as there is along the Schuylkill River.

II.

The Court Below Found That Unseaworthiness Did Not Exist in Fact, and That There Was No Breach of the So-Called "Warranty of Seaworthiness."

In the petition for certiorari the petitioners asserted conflict with certain decisions of this Court construing the *Safety Appliance Act*, 50 U. S. C. A. 1, et seq. That now seems to have become a subsidiary point. In the brief for petitioners, main reliance now seems to be based upon the proposition that any place or thing which, no matter what the circumstance, turns out to be unsafe or dangerous, is the equivalent of unseaworthiness so long as the place of the harm is upon navigable waters. This is a new concept not heretofore enunciated by any decision and clearly in conflict with the definition of "unseaworthiness" heretofore enunciated by this and other courts.

We first view our problem in its setting. A tug is traversing a wide and deep river, navigable to ocean-going as well as to small craft. The lanterns lighting the scow which it towed were found by the court to be "of a proper and suitable type" (R. 418). Although there is a refinery upon one bank of the river and at least one other refinery and certain facilities for oil storage are located *elsewhere* along the river, there are no restrictions upon the use of flames on the river. The District Court found (R. 418) not only that open lights are carried, but that internal combustion and steam engines requiring sparks and fire for their operation are used in vessels, large and small, which ply the river. Ships and tugs using the river have fires in galley stoves, small boats with open lights ply the river and men smoke upon the decks. The bridge of a main arterial

highway spans the river and the refinery very close to the scene of this fire (R. 418). Evidence was attempted to be offered that there had been occasions when fire on the surface of the river had occurred in the past, but the District Court found the contrary to be the fact. (Compare R. 183 with the findings at R. 418.) In short, there was nothing about the fact that there was a large oil refinery upon one bank of the river to place anyone on guard or to even suggest the possibility that volatile petroleum products might be floating upon the surface of the river. If there was ever a trap negligently set by others, this was it. What the petitioners are really arguing is that a ship is unseaworthy and that the owner has breached the warranty of seaworthiness because neither the owner, the officers or crew, anticipate and guard against such a fiendish and unprecedented trap.

To discuss the so-called warranty of seaworthiness requires a definition of terms. The most recent definition by this Court is in *Boudoin v. Lykes Bros. S. S. Co.*, 348 U. S. 336. This Court held that wararnty did "not mean that ships can weather all storms. It merely means that 'the vessel is reasonably fit to carry the cargo.' ". In its decision in Boudoin this Court cited and apparently approved the rationale of such cases as *Kenn v. Overseas Tankship Corp.*, 194 F. (2d) 515; *Jones v. Lykes Bros. S. S. Co.*, 204 F. (2d) 815; *The Silvia*, 171 U. S. 462; *Martin v. The Southwark*, 191 U. S. 1. By the footnote citation of *Stanlicwicz v. United Fruit S. S. Co.*, 123 F. Supp. 714 and *Kelcey v. Tankers Co.*, 217 F. (2d) 541, we take it that the court intended to illustrate some of the proper limits of the doctrine.

In *The Silvia* this Court said "the test of seaworthiness is whether the vessel is *reasonably fit* to carry the cargo which he has undertaken to transport." (Emphasis ours.) It is interesting to note in the same decision that this Court, in distinguishing between seaworthiness and navigation and management of a vessel, states "they (navigation and management) might not include stowage of cargo, not affecting

the fitness of the vessel to carry her cargo. . . . " That reasoning seems applicable to the case at bar.

In *Martin v. The Southwark*, 191 U. S. 1, the rule laid down in *The Silvia, supra*, was again examined; other cases were considered and the rule was reaffirmed. It is fair to summarize the holding as equivalent to the statement that a seaworthy ship is a ship *reasonably* fit for its intended voyage. Just as "a ship may be seaworthy as to one sort of cargo and unseaworthy as to another"[8] so it might be fair to hold that the barge in this case might not have been seaworthy had it been involved in collision, but it was certainly otherwise reasonably fit. The District Court in this case referred to the fact, in another context, that she was fit to meet "all the exigencies of the intended route and any exigency that is likely to happen" (R. 423).

Numerous Courts of Appeal have defined seaworthiness and their interpretation is in line with this Court's definition and holding in the *Boudoin* case. In *The Tawmie*, 80 F. (2d) 792 at 793, the Fifth Circuit said:

> "Though shipowners are held to a strict degree of diligence, seaworthiness does not require absolute perfection nor are owners held to the duty of furnishing appliances having the highest known degree of safety. It is sufficient if the equipment be that which is reasonably fit and safe for its purpose and reasonably adequate to the place and occasion where used by direction of the owner."

The First Circuit quoted and approved that definition in *Nunes v. Farrell Lines*, 237 F. (2d) 619.

The Third Circuit has said that:

> "Logically construed, liability for an unseaworthy vessel should obtain only when the individual affected is entitled to rely, and does rely, upon the seaworthiness of something actually unseaworthy."

Bruszewski v. Isthmian S. S. Co., 163 F. (2d) 720 at 722; cert. den. 333 U. S. 828.

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8. *Martin v. The Southwark.*

The Second Circuit has said:

> "The seaworthiness of a ship, her equipment and appurtenance is a relative concept, dependent in each instance upon the circumstances in which its fitness is drawn in question."

Lester v. United States, 234 F. (2d) 625, at 628; cert. granted 77 S. Ct. 130, dismissed 77 S. Ct. 384.

In *Doucette v. Vincent*, 194 F. (2d) 834 at 838, the First Circuit said:

> "But if the vessel and equipment, . . . were reasonably safe and suitable, the shipowner's obligation was performed, even though there may have been some other type of snatchblock more modern or more perfect in some detail."

All of these cases are cases involving personal injuries and illustrate that the warranty which the courts impose upon a shipowner is not an absolute one and the rule is not that the warranty is breached because injury occurs. No court has ever so held, this Court's decisions militate against such a holding and these rules should not now be changed.

Since we are dealing with a statute and Congressional intent should be one of the guideposts in construction, it is worthwhile to examine some history.

On October 3, 1932 the Court of Appeals for the Ninth Circuit decided *The Princess Sophia*, 61 F. (2d) 339, cert. den. 288 U. S. 604. The sinking of *The Princess Sophia* with the loss of more than 350 lives was one of America's worst maritime tragedies. In that litigation it was contended that the shipowner was not entitled to limitation of liability because the ship did not carry all of the life saving appliances prescribed by the statutes. (61 F. (2d) 346.) The court held, however, that "the penalty, however, is not

that the violator is to be held accountable for *any* mishap, regardless of its relation to the violation" (Page 347). The court went on to say (Page 348) that since no lives at all were saved, the fact that there may not have been sufficient life boats did not make for liability nor prevent limitation of it because of the lack of relationship between the violation and the loss. This Court denied certiorari, 288 U. S. 604.

In 1935 and 1936 Congress enacted the so-called *Sirovich Amendments* to the Limitation Statute. And while these made broad changes in the law, no attempt was made to alter the rule of the decision in *The Princess Sophia*. The decision in *The Princess Sophia* was recited and discussed in a report of a committee of the Maritime Law Association of the United States.[9] This report was submitted to the drafters of the amendments to the Limitation Act.

When it is considered that there is a finding of fact that the tug and tow in this case was adequate and competent to meet "all the exigencies of the intended route" and "any exigency that is likely to happen", we submit that the courts below have followed well-established and sound rules of law which should not now be changed. True it is that in the last-quoted language from the findings of the Trial Judge, he was referring to the competency of the captain of the tug, but it is clear that he had the rule before him and considered it when he made his finding with respect to the lights. The cases upon which the petitioners rely[10] were cases where, in fact, the injured party had, in the language of the Third Circuit,[11] been entitled to rely and had, in fact,

9. (Its document #196). Report on the history and present status of the domestic and foreign laws concerning limitation of shipowners' liability. Submitted January 30, 1955.

10. *Mahnich v. Southern S. S. Co.*, 321 U. S. 96; *Seas Shipping Co. v. Sieracki*, 328 U. S. 85; *The Fred Smarjley, Jr.*, 108 F. (2d) 604

11. *Bruszewski v. Isthmian S. S. Co.*, 163 F. (2d) 720 at 722

relied upon the seaworthiness of something which was not, in fact, seaworthy, with injury as the result. That is not the case here. The members of the crew of the tug were entitled to rely upon proper lighting to protect the flotilla from collision. They were not entitled and did not, in fact, rely upon the height of the lights to prevent the ignition of gasoline upon the surface of the river. The argument we now make is not related to negligence at all. It is rather viewing the so-called "warranty of seaworthiness" in its proper perspective as a warranty that the flotilla shall be reasonably fit and safe for the intended voyage, not that it will have the highest known degree of safety. It should not be regarded as unseaworthy if a chain of unprecedented and unforeseeable circumstance brings about harm. Clearly and obviously the person or persons who put or permitted a large quantity of highly inflammable material on the surface of a river was a wrongdoer and the fact that this respondent did not have lights in the proper place to prevent collision should not make it liable to these petitioners for the tort of this unknown third person. *The Eugene Moran, supra.*

The argument that an employer may be able to spread the cost of casualty over an industry is, we suggest, more an excuse than a reason for a different result. Examined realistically, this casualty should be charged to those who put or permitted the gasoline to be deposited upon the river. Neither comparisons of financial worth between petitioners and the defendant whose case happened to come to trial first, nor causation alone are accurate or appropriate gauges with which to measure responsibility under our system, no matter how important they may be in the law of other countries.[12]

12. Compare Sections 403-406 of the Soviet Civil Code. Also compare Gokhberg "Course of Civil Procedure," 1928, 34, Note 1; discussed in Soviet Civil Law, Vol. 1, P. 485, et seq. and Vol. 2, P. 210. Michigan Legal Studies; 1949.

We also respectfully suggest that it is not an answer to say that when Congress wished to aid shipping, it provided subsidies paid out of the public treasury. As we understand it, in the United States subsidies were paid to but twelve steamship lines.[13] There is a question of broad policy involved which, we suggest, is a matter for legislative determination. There are those who think that a system of competitive private enterprise is superior to a system of governmental subsidy under which survival is to the largest, not necessarily to the fittest.

III.

Petitioners' Reliance Upon Decisions Construing the Safety Appliance Act Is Misplaced.

The petitioners allege conflict with such decisions of this Court as *Davis v. Wolfe*, 263 U. S. 239 and *Coray v. Southern Pacific Co.*, 335 U. S. 520, but a close analysis will show that these cases do not stand for the proposition which the petitioners advance. They hold only that the accidents to the plaintiffs in those two cases were within the area of risk which Congress intended to minimize or obviate when it passed the Safety Appliance Acts. The area to be reduced was that of the risk of injury to employees of railroads.

The same is not true of the regulations intended to prevent collisions between vessels at night. The use of a lantern was specifically authorized by 33 U. S. C. A. 176. It was not "prohibited defective equipment."[14] Had the injury in our case occurred in daylight when lights to prevent collisions were not required, there would have been no violation of regulation at all and neither the result nor the rationale of the *Coray* and other cases cited by peti-

13. The so-called "Twelve Apostles," now eleven. We are informed that Seas Shipping Company, Inc. is no longer operating and is in liquidation.

14. *Coray v. Southern Pacific Co.*, 335 U. S. 520 at 523.

tioners upon this point are applicable to the facts of the present case.

The accident in this case did not occur because of the use of either prohibited or unlawful equipment. It occurred because an act of third persons set a trap.

CONCLUSION.

The decisions below were the result of the application of well-established rules to findings of fact which were made after the Trial Judge had heard disputed testimony. All witnesses but one testified in person. The rule of *McAllister v. United States*, 348 U. S. 19, is applicable. The present case should not be made the occasion for the further departure from established principles nor should something be read into an Act of Congress which Congress, re-examining the Act, did not see fit to require.

The decision below was right and it should be affirmed.

Respectfully submitted,

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APPENDIX.

Excerpts From Pilot Rules for Inland Waters.

80.16 Lights for barges, canal boats, scows and other nondescript vessels on certain inland waters on the Atlantic and Pacific Coasts.—(a) On the harbors, rivers, and other inland waters of the United States except the Great Lakes and their connecting and tributary waters as far east as Montreal, the Mississippi River above the Huey Long Bridge with all of its tributaries and their tributaries, the Red River of the North, the Mobile River above Choctaw Point with its tributaries and their tributaries, the Atchafalaya River above its junction with the Plaquemine-Morgan City alternate waterway, and the waters hereinafter described in §§ 86.16a and 80.17, barges, canal boats, scows, and other vessels of nondescript type not otherwise provided for, when being towed by steam vessels, shall carry lights as set forth in this section.

(b) Barges and canal boats towing astern of steam vessels, when towing singly, or what is known as tandem towing, shall each carry a green light on the starboard side and a red light on the port side, and a white light on the stern, except that the last vessel of such tow shall carry two lights on her stern, athwartship, horizontal to each other, not less than 5 feet apart, and not less than 4 feet above the deck house, and so placed as to show all around the horizon. A tow of one such vessel shall be lighted as the last vessel of a tow.

(c) When two or more boats are abreast, the colored lights shall be carried at the outer sides of the bows of the outside boats. Each of the outside boats in last tier of a hawser tow shall carry a white light on her stern.

(d) The white light required to be carried on stern of a barge or canal boat carrying red and green side lights

except the last vessel in a tow shall be carried in a lantern so constructed that it shall show an unbroken light over an arc of the horizon of 12 points of the compass, namely, for 6 points from right aft on each side of the vessel, and shall be of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least 2 miles.

(e) Barges, canal boats or scows towing alongside a steam vessel shall, if the deck, deck houses, or cargo of the barge, canal boat or scow be so high above water as to obscure the side lights of the towing steamer when being towed on the starboard side of the steamer, carry a green light upon the starboard side; and when towed on the port side of the steamer, a red light on the port side of the barge, canal boat, or scow; and if there is more than one barge, canal boat or scow abreast, the colored lights shall be displayed from the outer side of the outside barges, canal boats or scows.

(f) Barges, canal boats or scows shall, when being propelled by pushing ahead of a steam vessel, display a red light on the port bow and a green light on the starboard bow of the head barge, canal boat or scow, carried at a height sufficiently above the superstructure of the barge, canal boat or scow as to permit said side lights to be visible; and if there is more than one barge, canal boat or scow abreast, the colored lights shall be displayed from the outer side of the outside barges, canal boats or scows.

(g) The colored side lights referred to in this section shall be fitted with inboard screens so as to prevent them from being seen across the bow, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least 2 miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of 10 points of the compass, and so fixed as to throw the light from right ahead to 2 points abaft the beam on either

side. The minimum size of glass globes shall not be less than 6 inches in diameter and 5 inches high in the clear.

(h) Scows not otherwise provided for in this section on waters described in paragraph (a) of this section shall carry a white light each end of each scow, except that when such scows are massed in tiers, two or more abreast, each of the outside scows shall carry a white light on its outer bow, and the outside scows in the last tier shall each carry, in addition, a white light on the outer part of the stern. The white light shall be carried not less than 8 feet above the surface of the water, and shall be so placed as to show an unbroken light all around the horizon, and shall be of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least 5 miles.

(i) Other vessels of nondescript type not otherwise provided for in this section shall exhibit the same lights that are required to be exhibited by scows by this section. (R. S. 4233A, sec. 2, 30 Stat. 102, 38 Stat. 381, as amended, 33 U. S. C. 157, 178.)

80.16a Lights for barges, canal boats, scows and other nondescript vessels on certain inland waters on the Gulf Coast and the Gulf Intracoastal Waterway. (a) On the Gulf Intracoastal Waterway and on other inland waters connected therewith or with the Gulf of Mexico from the Rio Grande, Texas, to Cape Sable (East Cape), Florida, barges, canal boats, scows, and other vessels of nondescript type not otherwise provided for, when being towed by steam vessels shall carry lights as set forth in this section.

(b) When one or more barges, canal boats, scows, or other vessels of nondescript type not otherwise provided for are being towed by pushing ahead of a steam vessel; such tow shall be lighted by an amber light at the extreme

forward end of the tow and at the centerline of the tow, or as near the centerline as it is practicable to carry such light; and a green light on the starboard side and a red light on the port side, so placed that they mark the tow at its maximum projection to starboard and port, respectively.

(c) When being towed alongside a steam vessel on the starboard side, a barge, canal boat, scow, or other vessel of nondescript type not otherwise provided for shall have a green light on the starboard bow, and when being towed alongside on the port side, a red light on the port bow.

(d) When being towed on either side of a steam vessel, two or more abreast, only outboard barges, scows, canal boats, or other vessels of nondescript type not otherwise provided for shall carry the appropriate side lights.

(e) When being towed singly or in tandem on a hawser behind a steam vessel, each barge, canal boat, scow, or other vessel of nondescript type not otherwise provided for shall carry a white light at each end.

(f) When being towed in tiers, two or more abreast, each of the outside barges, canal boats, scows, or other vessels of nondescript type not otherwise provided for shall carry a white light on its outer bow, and in addition each of the outside boats in the last tier shall carry a white light on the outer part of the stern.

(g) When one or more barges, canal boats, scows, or other vessels of nondescript type not otherwise provided for are moored to the bank or dock in or near a fairway, such tow shall carry two white lights not less than four feet above the surface of the water, as follows: On a single moored barge, canal boat, scow, or other vessel of nondescript type not otherwise provided for, a light at each outboard or channelward corner; on barges, canal boats,

scows, or other vessels of nondescript type not otherwise provided for when moored in a group formation, a light on the upstream outboard or channelward corner of the outer upstream boat and a light on the downstream outboard or channelward corner of the outer downstream boat, and in addition any boat projection toward or into the channel from such group formation shall have two white lights similarly placed on its outboard or channelward corners.

(h) The colored side lights described herein must be fitted with inboard screens so as to prevent them from being seen more than half a point across the bow, of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least three miles, so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on either side.

(i) The amber light shall show an unbroken light over an arc of the horizon of 20 points of the compass, so fixed as to throw the light 10 points on each side, namely, from right ahead to 2 points abaft the beam on either side and shall be of such a character as to be visible at a distance of at least 3 miles.

(j) All lights described herein shall be carried at least eight feet above the surface of the water and at approximately the same height, except as provided in paragraph (g) of this section.

(k) The white lights described herein shall be so constructed as to show all around the horizon and shall be visible a distance of at least 2 miles. (R. S. 4233A, sec. 2, 30 Stat. 102, 38 Stat. 381, as amended, 33 U. S. C. 157, 178. Pub. Law 544, 80th Cong.)

80.16b Lights for barges, canal boats, scows, and other nondescript vessels temporarily operating on waters requiring different lights.—Nothing in §§ 80.16, 80.16a, or 80.17 shall be construed as compelling barges, canal boats, scows, or other vessels of nondescript type not otherwise provided for, being towed by steam vessels, when passing through any waters coming within the scope of any regulations where lights for such boats are different from those of the waters whereon such boats are usually employed, to change their lights from those required on the waters on which their trip begins or terminates; but should such boats engage in local employment on waters requiring different lights from those where they are customarily employed, they shall comply with the local rules where employed. (R. S. 4233A, sec. 2, 30 Stat. 102, 38 Stat. 381, as amended, 33 U. S. C. 157, 178, Pub. Law 544, 80th Cong.)

80.17 Lights for barges and canal boats in tow of steam vessels on the Hudson River and adjacent waters and Lake Champlain.—All nondescript vessels known as scows, car floats, lighters, and vessels of similar type, navigating the waters referred to in the following rules, shall carry the lights required to be carried by barges and canal boats in tow of steam vessels, as prescribed in such rules.

Barges and canal boats, when being towed by steam vessels on the waters of the Hudson River and its tributaries from Troy to the boundary lines of New York Harbor off Sandy Hook, as defined pursuant to section 2 of the act of Congress of February 19, 1895 (28 Stat. 672; 33 U. S. C. 151), the East River and Long Island Sound (and the waters entering thereon, and to the Atlantic Ocean), to and including Narragansett Bay, R. I., and tributaries, and Lake Champlain, shall carry lights as follows:

(a) Barges and canal boats being towed astern of steam vessels when towing singly shall carry a white light on the bow and a white light on the stern.

(b) When towing in tandem, "close up," each boat shall carry a white light on its stern and the first or hawser boat shall, in addition, carry a white light on its bow.

(c) When towing in tandem with intermediate hawser between the various boats in the tow, each boat shall carry a white light on the bow and a white light on the stern, except that the last vessel in the tow shall carry two white lights on her stern, athwartship, horizontal to each other, not less than 5 feet apart and not less than 4 feet above the deck house, and so placed as to show all around the horizon: *Provided*, That seagoing barges shall not be required to make any change in their seagoing lights (red and green) on waters coming within the scope of the rules of this section, except that the last vessel of the tow shall carry two white lights on her stern, athwartship, horizontal to each other, not less than 5 feet apart, and not less than 4 feet above the deck-house, and so placed as to show all around the horizon.

(d) Barges and canal boats when towed at a hawser, two or more abreast, when in one tier, shall each carry a white light on the stern and a white light on the bow of each of the outside boats.

(e) When in more than one tier, each boat shall carry a white light on its stern and the outside boats in the hawser or head tier shall each carry, in addition, a white light on the bow.

(f) The white bow lights for barges and canal boats referred to in the preceding rules shall be carried at least 10 feet and not more than 30 feet abaft the stem or extreme forward end of the vessel. On barges and canal boats required to carry a white bow light, the white light on bow and the white light on stern shall each be so placed above the hull or deck house as to show an unbroken light all

around the horizon, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least 2 miles.

(g) When nondescript vessels known as scows, car floats, lighters, barges or canal boats, and vessels of similar type, are towed alongside a steam vessel, there shall be displayed a white light at the outboard corners of the tow.

(h) When under way between the hours of sunset and sunrise there shall be displayed a red light on the port bow and a green light on the starboard bow of the head barge or barges, properly screened and so arranged that they may be visible through an arc of the horizon of 10 points of the compass; that is, from right ahead to 2 points abaft the beam on either side and visible on a dark night with a clear atmosphere at a distance of at least 2 miles, and be carried at a height sufficiently above the superstructure of the barge or barges pushed ahead as to permit said side lights to be visible.

(i) Dump scows utilized for transportation and disposal of garbage, street sweepings, ashes, excavated material, dredging, etc., when navigating on the Hudson River or East River or the Waters tributary thereto between loading points on these waters and the dumping grounds established by competent authority outside the line dividing the high seas from the inland waters of New York Harbor, shall, when towing in tandem, carry, instead of the white lights previously required, red and green side lights on the respective and appropriate sides of the scow in addition to the white light required to be shown by an overtaken vessel.

The red and green lights herein prescribed shall be carried at an elevation of not less than 8 feet above the highest deck house, upon substantial uprights, the lights properly screened and so arranged as to show through an arc of

the horizon of 10 points of the compass, that is, from right ahead to 2 points abaft the beam on either side and visible on a dark night with a clear atmosphere a distance of at least 2 miles.

Provided, that nothing in the rules of this section shall be construed as compelling barges or canal boats in tow of steam vessels, passing through any waters coming within the scope of said rules where lights for barges or canal boats are different from those of the waters whereon such vessels are usually employed, to change their lights from those required on the waters from which their trip begins or terminates; but should such vessels engage in local employment on waters requiring different lights from those where they are customarily employed, they shall comply with the local rules where employed."